

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA**

MICHEL PAYNE,

Plaintiff,

v.

CONTRACTOR LABOR LOCAL 1140,

Defendant.

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8:06CV685

ORDER

This matter is before the court on the defendant's Motion For Fees and Brief (Filing No. 60). The motion is associated to the defendant's successful motion to compel and this court's order granting reasonable costs and fees. **See** Filing Nos. 55 and 59. The defendant's attorney, Maynard H. Weinberg, filed an index of exhibits in support of the motion, including the affidavits of Mr. Weinberg and Duncan Young. **See** Filing Nos. 61, 61-2, and 61-3. The plaintiff filed a Motion to Denied [sic] Defendant's Fees Sanctions and Brief (Filing No. 74) and an Index of Exhibit On Motion To Denied [sic] Fees and Sanctions (Filing No. 75). The defendant filed a Reply Brief To Plaintiff's Motion To Deny Defendant's Attorney Fees (Filing No. 76).

Mr. Weinberg contends that on or about August 2, 2007, he talked with the plaintiff about agreeing to attorney fees pursuant to this court's order of July 31, 2007. **See** Filing No. 60. However, Mr. Weinberg contends the plaintiff refused to agree to any fees because the plaintiff was "out of work", but indicated the plaintiff would file a motion stating his inability to pay attorney fees. **Id.** The plaintiff contends that on or about June 21, 2007, he hand delivered five tapes from EEOC interviews, taped phone calls between the plaintiff and the defendant, and transcriptions of the tapes. **See** Filing No. 75. However, the plaintiff did not show cause as to why the defendant should not be awarded reasonable expenses pursuant to this court's order of July 10, 2007 or provide evidence of his inability to pay attorney fees. **See** Filing No. 55.

Mr. Weinberg states he spent two hours, at a rate of \$175.00 per hour, for work on the motion to compel. **See** Filing No. 61-2. This does not include the hour of time in

preparing the current motion, the index of exhibits, affidavits, and conferences with Duncan Young. *Id.* The total award sought is \$350.25. Accordingly, the court finds \$350.00 is a reasonable award of attorney's fees in this matter. Upon consideration,

IT IS ORDERED:

1. The defendant's Motion For Fees and Brief (Filing No. 60) is granted.
2. The plaintiff's Motion To Denied [sic] Defendant's Fees Sanction and Brief (Filing No. 74) is denied.
2. The defendant is awarded reasonable attorney's fees of \$350.00.
3. The plaintiff shall pay reasonable attorney's fees to the defendant incurred in regard to the defendant's motion to compel in the amount of **\$350.00**.
4. The Clerk shall, at the time of entry of judgment in this case, make this award a part of the judgment entered, unless at that time the parties certify that the amount awarded has heretofore been paid.

Dated this 10th day of October, 2007.

BY THE COURT:

s/Thomas D. Thalken
United States Magistrate Judge